

OTHER ACTIONS REQUIRING COMMISSION CONSIDERATION FOR APPROVAL

§293.80. Revenue Notes.

(a) A district, as defined by Water Code, §49.001 may not execute a revenue note as described by Water Code, §49.153 for a term longer than three years unless approved by the commission.

(b) This rule does not apply to special water authorities, as defined by Water Code, §49.001.

(c) Applications for commission approval of revenue notes except as provided in subsection (d) of this section shall include the following:

- (1) a resolution by the governing board requesting approval of the revenue note;
- (2) documents indicating district ownership of the facility;
- (3) a detailed explanation of the intended use and project to be financed, and complete justification for the proposed revenue note;
- (4) a copy of the district's current Rate Order or Amended Rate Order;
- (5) a proposed amortization schedule for the revenue note;
- (6) a draft of the proposed revenue note;
- (7) copies of the district's current operating budget and estimates of revenues and expenses for the years associated with the revenue note;
- (8) copies of all existing notes, liens or judgements against revenues associated with the facility;
- (9) an application fee in the amount of \$100; and
- (10) other information as the executive director may require.

(d) Revenue notes proceeds of which are used to reimburse a developer as defined in the Water Code, §49.052(d) are subject to §§293.41-293.61 of this title (relating to the Issuance of Bonds).

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§293.81. Change Orders.

A change order is a change in plans and specifications for construction work that is under contract. For purposes of this section, a variation between estimated quantities and actual quantities or

use of supplemental items included in the bid where no change in plans and specifications has occurred is not a change order.

(1) Districts are authorized to issue change orders subject to the following conditions.

(A) Except as provided in this subparagraph, change orders shall not be issued to increase the scope or change the nature of a project. Change orders may be issued only in response to:

(i) unanticipated conditions encountered during construction;

(ii) changes in regulatory criteria; or

(iii) coordination with construction of other political subdivisions or entities.

(B) All change orders must be in writing and executed by the district and the contractor and approved by the district's engineer.

(2) No commission approval is required if the change order is \$25,000 or less. If the change order is more than \$25,000, the executive director or his designated representative may approve the change order. For purposes of this section, if either the total additions or total deletions contained in the change order exceed \$25,000, even though the net change in the contract price will be \$25,000 or less, approval by the executive director is required.

(3) If the change order is \$25,000 or less, a copy of the change order signed by the contractor and an authorized representative of the district shall be filed with the executive director within 10 days of the execution date of the change order, together with any revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e. city, county, state, other, if required.

(4) Applications for change orders requiring approval shall include:

(A) a copy of the change order signed by an authorized officer or employee of the district and the contractor, and a resolution or letter signed by the board president indicating concurrence in the proposed change;

(B) revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e., city, county, state, other, if required;

(C) a detailed explanation for the change;

(D) a detailed cost summary showing additions and/or deletions to the approved plans and specifications, and new contract price or cost estimate;

(E) a statement indicating amount and source of funding for the change in plans including how the available funds were generated;

(F) the number of utility connections added or deleted by the change, if any;

(G) certification as to the availability and sufficiency of water supply and wastewater treatment capacities to serve such additional connections;

(H) filing fee in the amount of \$100; and

(I) other information as the executive director or the commission may require.

(5) Copies of all changes in plans, specifications and supporting documents for all water district projects will be sent directly to the appropriate commission field office, simultaneously with the submittal of the documents to the executive director.

(6) Requirements relating to change orders shall also apply to construction carried out in accordance with §293.46 of this title (relating to Construction Prior to Approval), except commission approval or disapproval will not be given. Change orders which are subject to executive director approval will be evaluated during the bond application review.

§293.82. Change in Project Scope or Plans.

(a) A change in project scope is a change in projects funded or a change in the land use plan used to support the feasibility of a commission approved bond issue which affects the central water or wastewater needs of the district or the amount of financial guarantees required pursuant to commission rules and that does not require an increase in the commission approved bond amount. All applications for a change in the project scope shall include:

(1) a copy of a resolution or letter signed by a majority of the governing board indicating concurrence in the proposed change;

(2) revised land use plan;

(3) revised build-out projections used to support the feasibility of the bond issue, if changed;

(4) revised cash flow analysis, if revised build-out projections have caused a reduction in projected assessed valuations;

(5) a complete justification for the change.

(6) the number of equivalent utility connections added or deleted by the change;

(7) an engineer's certification as to the availability and sufficiency of water supply and wastewater treatment capacities to serve such additional connections;

(8) a draft of the revised financial guarantee and agreement between the district and developer, along with an engineer's cost-estimate to complete the required projects if a change in the amount of financial guarantees is necessary to comply with commission rules;

(9) a Market Study Update if one was required at the time of the bond approval and bonds have not been issued and there has been a change in type of development;

(10) plans and specifications approved by all entities having jurisdictional responsibilities;

(11) filing fee in the amount of \$100; and

(12) other information as the executive director or commission may require.

(b) A change in plans is a change in commission-approved plans and specifications for construction work that is not under contract and that does not require a change in the commission approved bond amount.

(1) No commission approval is required if the change in plans is \$25,000 or less.

(2) All applications for change in plans shall include:

(A) a copy of a resolution or letter signed by the governing board, indicating concurrence in the proposed change (and for drainage districts, an advertisement affidavit indicating the proposed change in plans was published as required by Texas Water Code, §56.123);

(B) revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e., city, county, state, other, if required;

(C) a revised land use plan, if changed;

(D) a detailed explanation for the change;

(E) a detailed cost summary showing additions and/or deletions to the approved plans and specifications and new cost estimate;

(F) a statement indicating amount and source of funding for the change in plans including how the available funds were generated;

(G) the number of utility connections added or deleted by the change;

(H) an engineer's certification as to the availability and sufficiency of water supply and wastewater treatment capacities to serve such additional connections;

(I) a filing fee in the amount of \$100; and

(J) other information as the executive director or the commission may require.

(3) For purposes of this section, if either the total additions or total deletions contained in the change order exceed \$25,000, even though the net change in the contract price will be \$25,000 or less, approval by the executive director is required.

(c) Copies of all changes in plans, specifications and supporting documents for all water district projects will be sent directly to the appropriate commission field office, simultaneously with the submittal of the documents to the executive director.

§293.83. District Use of Surplus Funds For Any Purpose And Use of Maintenance Tax Revenue for Certain Purposes.

(a) Except as provided in paragraphs (3), (4) and (5) of subsection (c) of this section, a district contemplating use of surplus bond funds, interest earned on invested bond proceeds, grants, contributions by others for costs sharing of facilities constructed with bond funds and litigation settlements related to projects financed by bond proceeds must receive approval from the executive director prior to obligation of these funds for any purpose.

(b) A district contemplating the use of operation and maintenance tax revenue for reimbursement to a developer (as defined in Water Code, §49.052 (d)), of property, or its assigns, for planning, construction, or acquiring facilities must receive approval from the executive director.

(c) Application requirements are:

(1) For engineering projects, the following documents shall be submitted:

(A) a resolution by the governing board requesting approval of the project;

(B) construction plans and specifications approved by all agencies having jurisdictional responsibilities;

(C) a detailed explanation of the project;

(D) a detailed cost summary;

(E) if developer reimbursement from an operation and maintenance tax, operating budgets showing revenues and expenditures over the years from which the operation and maintenance tax revenue is derived;

(F) the number of utility connections to be added (if applicable) and area served;

(G) engineer's certification as to the availability and sufficiency of water supply and wastewater treatment capacities to serve such additional connections;

(H) a written statement from district's bookkeeper stating the amount and source of funding including how available funds were generated;

(I) the 100-year flood data for area to be served if not previously provided;

(J) evidence of compliance with the requirements of §§293.41-293.60 of this title.

(K) an application fee in the amount of \$100; and

(L) other information as the executive director may require.

(2) For expenditures other than engineering projects, the following documents shall be submitted:

(A) a resolution by the governing board requesting approval of the expenditure;

(B) a complete justification and explanation of purpose for which the funds are proposed for expenditure;

(C) if developer reimbursement from an operation and maintenance tax, operating budgets showing revenues and expenditures over the years from which the operation and maintenance tax revenue is derived;

(D) other information as the executive director may require; and

(E) an application fee in the amount of \$100.

(3) Subject to the requirements prescribed in subsection (4) of this section, a district which has a no-growth tax rate of \$2.00 per \$100 assessed valuation or less calculated by dividing its average annual debt service on existing tax supported debt by current taxable assessed valuation/100, may use surplus funds for improvements necessary to serve development within the district as follows without further approval:

(A) rehabilitation or maintenance of facilities previously approved by the commission for funding and owned by the district if the scope of the originally approved project has not changed.

(B) engineering and construction costs associated with constructing water plant or wastewater treatment plant improvements located on the plant site, including storage facilities to meet project needs within the district's boundaries.

(C) pump stations and force mains located within the boundaries of the district which directly connect the districts wastewater system to a regional plant.

(D) alternate water supply interconnects between two or more districts.

(4) Districts contemplating the use of surplus funds as provided in paragraph (3) of this section must:

(A) receive all required approvals of associated plans and specifications from other governmental agencies, including the commission, prior to construction;

(B) submit to the executive director and the appropriate field office those documents required by §293.62 of this title (relating to Construction Related Documents To Be Filed With the Commission).

(C) report expenditures of all surplus funds in their annual audit report in the notes to the financial statements disclosing any amounts transferred among the funds including the use of surplus funds and the authority for such transfers.

(d) A district may transfer surplus interest earnings on invested bond proceeds to its debt service account without executive director approval if permitted by its bond covenants and if such funds are not committed for other purposes.

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§293.84. District Use of Escrowed Funds.

(a) A district contemplating the use of commission-directed escrowed funds for a purpose approved in the bond application must file the following documents with the executive director:

(1) a resolution by the governing board or a letter from the board president requesting approval of the expenditure;

(2) evidence that the reason for escrow of such funds has been satisfied; and

(3) other information as the executive director or the commission may require and requested within 10 days of receipt of application; and

(4) a filing fee in the amount of \$100.

(b) A district contemplating use of commission-directed escrowed funds for purposes other than as approved by the commission in the bond application must receive approval of the executive director. To secure such approval, the following documents must be filed:

(1) for engineering projects:

(A) the documents required by §293.83 (4) of this title (relating to District Use of Surplus Funds); and

(B) a resolution of the governing board or a letter from the board president requesting such release from escrow;

(2) for purposes other than engineering projects:

(A) a resolution by the governing board requesting escrow release;

(B) a detailed explanation of purpose for which the funds will be expended;

and

(3) a filing fee in the amount of \$100; and

(4) other information as the executive director may require.

§293.85. Change in Commission Approved Maturity Schedules, Commission Approved Tax Rates, or Increase in Commission Approved Bond Interest Rate.

(a) If a district proposes an increase in a commission approved interest rate or a change in maturity schedule which requires no increase in bond amount or change in the commission approved tax rate, the district shall file a written statement with the executive director signed by the board president indicating that no such increase or change is required and shall provide a revised bond issue cost summary. Under these conditions, no further approval is required.

(b) If a district proposes a change in a commission approved interest rate or a change in maturity schedule which requires an increase in the bond amount, approval of the commission of a bond amendment by the district is required.

(c) If a district proposes a change in a commission approved interest rate or maturity schedule which requires a change in the commission approved tax rate, approval of the executive director, is required. To secure such approval, the district shall file the following:

(1) resolution by the governing board requesting approval of the change;

(2) a revised cost summary, if applicable, projection of revenues and expenses, and amortization schedule, as applicable;

(3) a detailed explanation for the change;

(4) a filing fee in the amount of \$100; and

(5) other information as the executive director may require.

§293.86. Bond Amendment.

A bond amendment is a change in a commission approved bond issue project that requires an increase in the approved bond amount. Applications for bond amendments require commission approval and shall include the following:

(1) a resolution by the governing board requesting approval of the bond amendment;

(2) revisions to applicable required items which were previously submitted pursuant to §293.43 of this title (related to Application Requirements);

(3) a detailed explanation of the amendment;

(4) filing fee in the amount of \$100; and

(5) other information as the executive director may require.

§293.87. Application for Extension of Time to Sell Bonds.

An application to extend the Commission's approval of a bond issue must include the following:

(1) a resolution by the governing board requesting approval to extend the Commission's approval of the bond issue;

(2) updated build-out schedules if changed from original projections;

(3) market study update if a market study was required in original bond application;

(4) revised table of projected revenues and expenses;

(5) if the application includes a change in the approved interest rate, maturity schedule or total bond amount, a revised amortization table;

(6) if the original approval did not contain funds for the 0.25% fee required pursuant to Section 293.45 of this title, applicant must submit a revised cost summary including such fee;

(7) a filing fee in the amount of \$100; and

(8) other information as the executive director may require.

§293.88. Petition for Authorization to Proceed in Federal Bankruptcy.

(a) A district desiring to proceed under the Federal Bankruptcy Code, Chapter 9 (11 United States Code §§901-946) or any other federal bankruptcy law shall submit an application requesting authorization pursuant to Water Code, 49.456. The application shall consist of the following:

(1) a certified copy of the resolution adopted by the board of directors or other governing body requesting such authorization;

(2) an application fee of \$100 plus the cost of required notice;

(3) a district status report with all information current and certified within 30 days prior to the date of submittal;

(4) a comparison of the projections or assumptions of growth, taxes, revenues and expenses submitted to the commission in connection with the approval of the bonds issued most recently by the district, or, if commission approval was not required, the projections or assumptions used by the district in connection with the bonds most recently issued by the district, to the actual growth, taxes, revenues and expenses;

(5) a description of the reasons that, in the opinion of the governing body of the district, the projections and assumptions used in connection with the most recent issue of bonds were not realized and any other factors which have caused the district financial difficulties;

(6) a complete analysis of the tax rate, user fees or other charges or sources of revenues that the district may lawfully impose that would be necessary in order for the district to meet its debts and obligations as they become due and the impact of such taxes and fees upon taxpayers and users within the district;

(7) a complete analysis of the reasons that the district cannot, through the full exercise of its rights and powers under the laws of this state, reasonably expect to meet its debts and other obligations as they mature;

(8) a statement of whether the district has complied with the commission order, approving the issuance of bonds, and this chapter;

(9) a list of the names and addresses of all creditors of the district or a statement explaining the reasons for the inability to obtain such a list and the efforts taken to identify such creditors;

(10) the plan of adjustment of the district's debt which it proposes to file in the bankruptcy proceeding if the commission authorizes the district to proceed; and

(11) such other information which the commission considers material to a determination of whether authorization to proceed in bankruptcy should be granted.

(b) The chief clerk shall mail written notice to all creditors shown in the district's application, all developers and their lienholders and the top ten taxpayers shown in the district status report, the city in whose corporate limits or extraterritorial jurisdiction the district is located, if any, and the county in which the district is located. The chief clerk shall publish notice of the application at least once a week for two consecutive weeks in a newspaper of general circulation in the county in which the district is located. The chief clerk shall also publish notice of the application once in the Texas Bond Reporter of Austin, The Daily Bond Buyer, The Weekly Bond Buyer, or The Wall Street Journal. Such notices shall be mailed or published within 30 days of the date an administratively complete application is received by the executive director. No hearing on the application shall be held less than 30 days after such notices are given, mailed or published.

(c) If, after hearing and consideration of all evidence, the commission determines that the district cannot, through the full exercise of its rights and powers under the law of this state, reasonably

expect to meet its debts and other obligations as they mature, the commission may authorize the district to proceed in bankruptcy.

(d) If, after hearing, the commission determines that the district can, through the full exercise of its rights and powers under the laws of this state, reasonably expect to meet its debt and other obligations as they mature, the commission shall deny the district's application and shall order the district to adopt specific measures to generate sufficient revenues to meet its obligations. The commission shall also require the district to submit periodic reports on the implementation of the measures required by the commission and its current financial condition.

(e) The commission may assess additional fees adequate to cover its cost in administering this section.

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